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SUBJECT: UN LEGAL COUNSEL REPORTS CONTINUING PROGRESS ON
SPECIAL TRIBUNAL

REF: USUN 821

Classified By: Amb. Alejandro D. Wolff, for reasons 1.4(b) and (d).

¶1. (C) BEGIN SUMMARY: UN Legal Counsel and Under-Secretary-General for Legal Affairs (OLA) Nicolas Michel updated Ambassador Wolff on October 17 on the UN's work to make the Special Tribunal for Lebanon operational soon. Michel reported that the selections panel for the judges and prosecutor will meet in New York October 22-23 to develop a short list of judicial nominees and to recommend a prosecutor. He also reported that the UN has prepared comments on the draft Headquarters Agreement with the Netherlands and hopes to finalize negotiations on it before the end of the year. Finally, Michel said OLA plans to set up both a Management Committee, representing donors to the Special Tribunal, and a broader group of interested states to discuss issues relating to the Special Tribunal. END SUMMARY.

¶2. (C) Michel told Amb. Wolff that the selections panel for the judges and prosecutor for the Special Tribunal will meet October 22-23 to develop a short list of judges. The Lebanese government has sent Antoine Kheir, the head of Lebanon's Higher Judicial Council, to New York to be available for consultations with Michel and the selections panel. After ensuring that it has gathered all the necessary about those candidates it short-lists, the selections panel will meet again late November to interview those candidates. Michel praised the high caliber of some of the 35 nominees for the international judicial positions, but expressed concern that no Arab states have presented nominations. Amb. Wolff advised Michel that the United States has urged Arab states to nominate judges, but also advised Michel not to delay the process and to ensure that the selections panel completes its short list next week. Amb. Wolff also provided Michel with a CV of one of the U.S. judicial nominees. He advised Michel that OLA could obtain the CVs for the remaining three U.S. nominees through the Department of Peacekeeping Operations, since they had held judicial positions in UNMIK.

¶3. (C) As for the prosecutor, Michel said he had held phone interviews with two of the candidates and hoped the panel would make a final selection to forward to the Secretary-General by the evening of October 23. Next, the

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SYG would notify the Security Council of his intention to appoint that person as the UNIIIC Commissioner to replace Brammertz. Once the Security Council has replied to the SYG, taking note of the SYG's intention, the SYG would announce that he had appointed that person as the UNIIIC Commissioner. Second, the SYG would announce that he had appointed that same persons as prosecutor of the Special Tribunal, to assume his duties "at a later stage."

¶4. (C) Michel said the UN hopes to have the budget finalized for the Special Tribunal before the end of November. To do so, the UN still needs information on the building the Dutch are prepared to provide. The Dutch have indicated that they will offer use of a building its Secret Services will be vacating soon, but because the building lacks a courtroom, Michel expressed concern about the cost of constructing one. Michel said he hopes to receive a specific proposal from the Dutch this week. If that proposal does not seem reasonable, Michel said the UN might ask the United States to reach out to the Dutch to encourage them to propose alternatives.

¶5. (C) Michel said the UN is also laying the groundwork to establish the Management Committee soon. The UN has consulted with the Lebanese, as the annex to resolution 1757 (2007) requires, and the Lebanese have authorized the UN to adopt terms of reference for the Management Committee. Before establishing the Management Committee, the UN plans to convene an informal meeting of the main contributors to the Special Tribunal to solicit views, but it is still waiting to do so until it has a better sense of which states will be contributing. To ensure efficiency and to prevent the Committee from blocking the Tribunal's operations, the UN plans to limit membership in the Management Committee to a small group. At the same time, to ensure that other interested states feel they have an opportunity to contribute views on the Tribunal, the UN will convene a second group of interested states.

¶6. (C) Finally, Michel expressed hope that the UN and the Dutch would conclude negotiations on the Headquarters Agreement before the end of the year but said the key issue remains the Dutch request for prior assurances that other states would take persons convicted by the Tribunal "immediately" after their trials conclude. Previously, the Dutch had said they would not/not agree to host the Tribunal

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until they had received such assurances. Michel said he told the Dutch securing those assurances now would be "mission impossible," and said if the Dutch do not change their position, he might need U.S. assistance. Amb. Wolff said he thought it would be difficult for the Dutch to walk back from their commitment to host the Special Tribunal and said we would need to resist any sign that the Dutch might be wavering. Michel also requested U.S. views on whether, as a compromise, the UN could agree that the Dutch could request such assurances before any suspect enters the Netherlands for trial.

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